

LYDIA FRAZEE, ADMINISTRATRIX OF JOHN FRAZEE

[To accompany Bill H. R. C. C. No. 93.]

FEBRUARY 11, 1860.—The Court of Claims submitted the following report, which, together with the accompanying bill, was referred to the Committee of Claims.

MARCH 1, 1860.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

The Court of Claims respectfully presents the following documents as the report in the case of

LYDIA FRAZEE, ADMINISTRATRIX OF JOHN FRAZEE.

vs.

THE UNITED STATES.

1. The petition of the claimant.
2. Documentary evidence and depositions filed by claimant, transmitted to the House of Representatives.
3. Certified copies of letters from the Treasury Department, furnished by the Solicitor, transmitted to the House of Representatives.
4. Claimant's brief.
5. United States solicitor's brief.
6. Opinion of the court.
7. Bill allowing claimant \$2,868, ordered to be reported to Congress.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,  
[L. S.] A. D. 1859.

SAMUEL H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

COURT OF CLAIMS.

LYDIA FRAZEE, *vs.* THE UNITED STATES.

*To the honorable Judges of the Court of Claims:*

The petition of Lydia Frazee, of the city of New York, widow and administratrix of John Frazee, late of said city, deceased, respectfully represents: That on the 22d day of July, 1855, with the approbation of the Treasury Department, the said John Frazee was appointed architect and superintendent of the New York custom-house, at a salary of seven dollars per day; his travelling expenses on the business of his office to be paid, and an assistant, or draughtsman, was allowed him, at three dollars per day.

That when he was thus appointed the massive foundations of the custom-house had been laid, and raised even with the ground, and marble had been already wrought and finished at the quarries, some twenty miles from the city, under the direction of the former superintendent, and in accordance with plans which he had furnished, amounting in value to more than fifty thousand dollars. These plans and drawings had, however, upon the resignation in May previous of that superintendent, been taken away by him, and he refused upon application to surrender them, and they never have been surrendered. This great and unexpected difficulty was, however, overcome; the stone already wrought was rendered available, and all the various artisans engaged in the work were fully and successfully employed.

In May, 1837, the labors of the said John Frazee having been greatly increased by the resignation of his assistant, the commissioners decided, with the approbation of the Secretary of the Treasury, to increase his pay to nine dollars per day, but to withhold at the same time the allowance for his travelling expenses. These expenses were unavoidable. Not a stone was laid in the building but in precise conformity with a plan previously furnished; supervision of the work at the quarries was therefore indispensable, and visits were made to the quarries once or twice a week, at the cost of four and five dollars each visit, during the whole period of quarrying the stone. This additional compensation of the said John Frazee was further affected by the sums he found it indispensable to pay from time to time for the aid of assistant draughtsmen in the progress of the work.

Under this contract for the compensation of the said John Frazee the erection of the building went on, and nothing occurred to affect it or lessen its binding force until the autumn of 1840, when a difference arose between Walter Bowne, esq., one of the commissioners, and the said John Frazee, concerning the manner and style of finishing the interior, and the furniture for the building. So much at variance with architectural propriety and good taste, in the opinion of the said John Frazee, were the views and plans of Mr. Bowne, that their adoption would have compromised the professional character of the architect; the said John Frazee, therefore, did most strenuously oppose them, and was sustained in his opposition to them by the opinion of the then collector and advisory commissioner, Mr. Hoyt;

the result of which was the delivery to the said John Frazee of a paper, of which the following is a copy :

“*Resolved*, That the services of the superintendent and architect be dispensed with from and after the 5th December, 1840, and that his pay cease from that date.

“WALTER BOWNE,  
“*Commissioner and agent, New York.*

“NEW CUSTOM-HOUSE,  
“November 30, 1840.”

It was usual for resolutions relating to the affairs of the building to receive the signature and approval of the advisory commissioner ; but both were in this instance withheld by Mr. Hoyt, who considered the course of Mr. Bowne unwarrantable and without excuse, and who remonstrated against the dismissal of the said John Frazee for a mere difference of opinion with Mr. Bowne, while so much important work, requiring constant supervision of the architect, remained to be done.

The whole matter was submitted to the Secretary of the Treasury, who referred it to the naval officer and surveyor of the customs at New York. On the 26th February, 1841, Mr. Coe, deputy naval officer, (in the absence of his principal,) and Mr. Moore, surveyor, reported their opinions upon the matters in controversy, fully sustaining all the views of the said John Frazee, and, amongst other things, said :

“We would most respectfully beg leave to state it here, as our deliberate opinion, that justice cannot be done to Mr. Frazee without allowing him his usual compensation during the whole interval since his dismissal on the 5th December, 1840, he having been improperly dismissed, without cause,” &c.

Upon this report, and in conformity with its opinion, the Secretary, on the 3d March, 1841, directed that the said John Frazee should be “continued” in the situation of architect and superintendent until the completion of the building, and that his plans and designs for finishing the interior and for the furniture should be carried into effect.

Believing, as the said John Frazee did, that Mr. Bowne’s resolution of dismissal above referred to would not be sanctioned by the Secretary, the said John Frazee continued, by the advice and at the request of Mr. Hoyt, to attend daily, as usual, at the building, and to advise the workmen employed there, until he received the Secretary’s letter continuing his services, as already mentioned, and by virtue of which he resumed the full discharge of his duties as superintendent and architect.

On the 23d March, 1841, Mr. Curtis succeeded to the collectorship of the port of New York ; and, under the administration of Mr. Curtis, the said John Frazee proceeded in the superintendence of the work upon the custom-house, and the completion thereof, and the construction of the requisite furniture, devoting his whole time and attention thereto, with the full approbation and concurrence of the collector and the Treasury Department, until the 21st of May, 1842, when the work was finished ; and during that period, as well as before, he made,

at the request of the collector and of the other government officers in charge of the work, various journeys to Washington, at his own expense, to explain the progress of the work and the amount and character of the appropriations required, so as to obtain such appropriations from Congress; which expenses he charged to the government, and expected to receive when his account for services and disbursements was finally settled.

And the petitioner further shows that the services rendered by the said John Frazee, as herein stated, were arduous and difficult, requiring his whole time and attention, and a high degree of professional skill; that his said duties were discharged with eminent fidelity and success, and to the entire approbation of the government, of which the structure itself on which his labors were expended affords the highest and most satisfactory evidence; and that, in the discharge of these duties, and in consequence of the exposure incident thereto, he contracted a severe disease, from which, after long suffering, he died.

And the petitioner further represents that at the completion of the custom-house further appropriations were needed to pay the amount due said John Frazee, and other similar claims arising out of the work; that the matter was brought before Congress, and said John Frazee attended at Washington several times, at very considerable expenditure of time and money, to endeavor to procure the payment due him; that after many delays a clause was inserted in the general appropriation bill passed by Congress in the year 1843, providing for his payment, which, having passed the Senate upon report of their Finance Committee, was rejected, among many other clauses, in the House, though approved by the Committee of Ways and Means; and, upon the Senate adhering, was referred to a committee of conference, and finally stricken out, from the necessity of a compromise which would insure the passage of the bill.

That afterwards the said Frazee continued from time to time, as far as his limited means would allow, to press his claim for payment upon Congress, there being no appropriation out of which the same could be paid at the treasury. But, although the validity of his claim was always acknowledged by the department, and no adverse action was had thereon in Congress, he never succeeded in obtaining any favorable action. The petitioner is now unable to state, if it were material, the precise history of these various efforts, but finds no record of congressional action in the premises, except that in the first session of the thirtieth Congress a memorial and accompanying documents was presented in behalf of the said Frazee in the House of Representatives, praying payment of his said claim, and was referred to the Committee of Claims; and that no further action thereon appears from the records, or was had, so far as the petitioner knows or is informed. And the petitioner states that since the death of her husband, which occurred on the 26th of February, 1852, she has been in very limited circumstances, and wholly unable hitherto to press said claim upon the attention of Congress, even had she been advised that in the existing condition of that department of the public business, prior to the establishment of this court, there would have been any reasonable prospect of obtaining the action of Congress thereon.



And the petitioner further states that there is justly due to the estate of the said John Frazee from the government of the United States, for the services and labor and disbursements above described, and upon contract of the government to pay for the same, the sum of thirty-seven hundred and fifty dollars and thirty-nine cents, with interest thereon from the 21st day of May, 1842, being for four hundred and fifty-six days' services and expenses, at nine dollars per day, and two hundred and seven dollars and thirty-nine cents expenses incurred in the journeys to Washington, made, as aforesaid, during the progress of the work, after deducting the sum of five hundred and sixty-one dollars received on account; and that of the above balance no part has ever been paid.

And the petitioner further shows to the court that on the 10th day of January, 1856, she was duly appointed, by the surrogate of the county of New York, administratrix of said John Frazee, and therefore claims that there is justly and legally due her, as such administratrix, from the government of the United States, upon the contract aforesaid, the aforementioned sum, with the interest thereon, and prays that the same may be allowed her by the court, and a bill reported for the payment thereof, as required by law.

Dated at New York, this 10th day of January, 1856.

JOHN J. LATTING,

*Counsel for Claimant.*

STATE OF NEW YORK, }  
City and County of New York, } ss:

Lydia Frazee, of said city the claimant above named, being duly sworn, says: That the facts stated in the foregoing petition are true to the best of her knowledge and belief.

LYDIA FRAZEE.

Sworn this 10th day of January, A. D. 1856, before me,

CHARLES A. MAY,

*Commissioner for the Court of Claims, N. Y.*

No. 9.

*The people of the State of New York to Lydia Frazee, of the city of New York, the widow of John Frazee, deceased, send greeting:*

Whereas the said John Frazee lately departed this life intestate, being at or immediately previous to his death an inhabitant of the county of New York, by means whereof the ordering and granting administration of all and singular the goods, chattels, and credits whereof the said intestate died possessed in the State of New York, and also the auditing, allowing, and final discharging the account thereof, doth appertain unto us, and we being desirous that the goods, chattels, and credits of the said intestate may be well and faithfully

administered, applied, and disposed of, do grant unto you, the said Lydia Frazee, full power, by these presents, to administer and faithfully dispose of all and singular the said goods, chattels, and credits; to ask, demand, recover, and receive the debts which unto the said intestate, whilst living, and at the time of his death, did belong; and to pay the debts which the said intestate did owe, as far as such goods, chattels, and credits will thereunto extend and the law requires, hereby requiring you to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said intestate, within a reasonable time, and return a duplicate thereof to our surrogate of the county of New York, within three months from the date of these presents; and if further personal property or assets of any kind not mentioned in any inventory that shall have been so made shall come to your possession or knowledge, to make, or cause to be made, in like manner, a true and perfect inventory thereof, and return the same within two months after discovery thereof; and also to render a just and true account of administration when thereunto required; and we do, by these presents, depute, constitute, and appoint you, the said Lydia Frazee, administratrix of all and singular the goods, chattels, and credits of the said John Frazee, deceased.

In testimony whereof, we have caused the seal of office of the surrogate of said county to be hereunto affixed. Witness Alexander W. Bradford, surrogate of said county, at the city of New York, the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eightieth.

A. W. BRADFORD,  
*Surrogate.*

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No. 10.

*United States to John Frazee, Dr.*

To services rendered as architect and superintendent of the building of the New York custom-house, from the 5th day of December, 1840, up to the 21st day of May, 1842, 456 days, at \$9 per day..... \$4,104 00

To my expenses in travelling twice to Washington, and boarding there, in the months of April, May and June, 1842, for the purpose of obtaining an appropriation to pay off the arrearages due for labor and materials in the finishing of the building..... 207 39

4,311 39

*Cr.*

By sundry articles made for me at the building,  
amounting to ..... \$39 00

By cash on account..... 522 00

561 00

3,750 39

## No. 1.—A.

OFFICE OF THE COMMISSIONER FOR BUILDING CUSTOM-HOUSE,  
*New York, May 19, 1837.*

SIR: Your letter of 29th ultimo was duly received. The commissioners, in consideration of the close application and arduous duties required of Mr. Frazee in his situation of superintendent and architect, do therefore recommend it to the department to allow Mr. Frazee two dollars per day in addition to the seven dollars now allowed him. The commissioners take pleasure in stating that they have entire confidence in the talents and ability of Mr. Frazee in carrying forward the building to its completion, and to the full satisfaction of the government.

It is understood that, should Mr. Frazee require aid to draw or copy plans or specifications no charge is to be made, nor for expenses visiting the quarry or other places where persons are at work for the new custom-house building.

Most respectfully, your obedient servants,  
WALTER BOWNE,  
DANIEL JACKSON,  
BENJAMIN RINGGOLD,  
*Commissioners.*

Hon. LEVI WOODBURY,  
*Secretary of the Treasury.*

Approved by the commissioners.

W. L., *Secretary.*

Endorsed: This I will admit if correctly copied.

M. B.

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No. 2.—B.

TREASURY DEPARTMENT, *May 24, 1837.*

GENTLEMEN: In consequence of the recommendations contained in your letter of the 19th instant, in reference to the application of Mr. John Frazee to be allowed an increase of two dollars per day to his present compensation as architect and superintendent to the new custom-house building, and with the understanding that he is also to discharge the duties assigned to a clerk heretofore allowed him, the proposed increase is authorized.

I am, very respectfully, your obedient servant,  
LEVI WOODBURY,  
*Secretary of the Treasury.*

Messrs. WALTER BOWNE,  
DANIEL JACKSON,  
BENJAMIN RINGGOLD,  
*Commissioners, &c., New York.*

Endorsed: This I will admit if correctly copied.

M. B.

## No. 3.

TREASURY DEPARTMENT, *March 3, 1841.*

SIR: The department having called upon the deputy naval officer at New York to report their joint views in regard to the difference of opinion existing between yourself and Mr. Hoyt respecting certain matters connected with the new custom-house building, they have accordingly complied with my request.

In accordance with their recommendations, I deem it proper to authorize Mr. John Frazee to be continued in the situation of superintendent and architect of the building, until the custom-house and the furnishing of the respective rooms shall have been completed. And it is desirable that Mr. Frazee's plans for the interior arrangements of the building should be carried into effect, so far as regards the arrangement of the fly-doors, furniture, and painting of the iron work.

I am, &c., &c.,

LEVI WOODBURY,  
*Secretary of the Treasury.*

WALTER BOWNE, Esq.,  
*Commissioner, New York.*

Endorsed: This may be read in evidence.

M. B., *Solicitor.*

## No. 4.

TREASURY DEPARTMENT, *March 3, 1841.*

SIR: For your information, I transmit herewith a copy of my communication of this date to Walter Bowne, esq., commissioner, &c., respecting yourself and other matters connected with the new custom-house building.

I am, very respectfully, your obedient servant,

LEVI WOODBURY,  
*Secretary of the Treasury.*

JOHN FRAZEE, Esq.,  
*Superintendent and Architect, &c., New York.*

Endorsed: I admit this in evidence.

M. BLAIR, *Solicitor.*

## No. 5.

*Mr. Curtis' statement.*

COLLECTOR'S OFFICE, *New York, March 7, 1844.*

I have read Mr. Frazee's memorial. To the best of my recollection he has truly stated the conversation which passed between him and



myself when I entered upon the duties of the office of collector in March, 1841.

I was not a commissioner for the superintendence of the construction of the new custom-house, and neither had nor professed to have any power or responsibility in respect to its construction, nor in regard to the terms or compensation of Mr. Frazee as its architect. His commission was from the Department of the Treasury, and I mentioned in one of my letters to Mr. Ewing what had been paid by Mr. Frazee, but I received no authority to make any new arrangement touching his terms or his compensation, and no notice was taken by the department of what I communicated.

In the spring of 1842 Mr. Frazee frequently spoke to me of the trouble that existed from the want of means to pay the workmen employed on the building and others who had claims for materials furnished. There was no acting commissioner. On several former occasions, in previous years, the work on the building had been ahead of the appropriations, and the commissioner had sent Mr. F. to Washington to make the necessary explanations and aid in obtaining the requisite appropriations. I advised him to go to Washington, as he had been on former occasions, and explain to the department and Congress the state of the accounts, show what and how much was due, and, by application to the Department of the Treasury and to Congress, to do what he could to obtain the means to pay off the arrears to laborers and others having just claims. In accordance with this advice, Mr. F. went to Washington in May or June, 1842.

I believe Mr. Frazee's claim to be just. After seven years' superintendence of the great work committed to his charge, Mr. F. has come out of it a very poor man. I know he has been skilful, and have every reason to believe he has been faithful to the government.

He is likely to be a cripple for life from disease contracted by exposure of his health while in the discharge of his duty.

I hope he will receive the compensation to which he is entitled.

Endorsed: This may be admitted in evidence.

M. B.

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NEW YORK, *March 6, 1844.*

SIR: I received your letter of the 1st instant, in regard to your connexion, as architect and superintendent, with the new custom-house in this city, and you put to me three inquiries in reference thereto, to which I have to say:

1st. I was associated with Walter Bowne, esq., in its general superintendence from March 29, 1838, to March 2, 1841, and I recollect that we differed in opinion in reference to several matters connected with the subject, and among other things I objected to your dismissal as architect in the fall of 1840, or at least I did not approve of that measure. I think I wrote the Secretary of the Treasury on the subject at the time of it, and if so, a copy of the letter, no doubt, will be found on file in the custom-house, and the collector, at your

request, would permit you to take a copy for any proper purpose you may have in view.

2d. I wrote to the Secretary under the idea that he would interfere in a matter about which there was a difference of opinion between Mr. Bowne and myself, and therefore I recommended that you should remain at the building and see that nothing was done inconsistent with the general plan which had been adopted for its construction, until the Secretary should decide upon the points upon which Mr. Bowne and myself differed, and you adopted my advice and did remain until the Secretary did order you to be continued, which I considered at the time as a decision on his part that you had not been dismissed according to the appropriate forms.

3d. In regard to your visits to Washington on business relating to the new custom-house, to explain in reference to appropriations asked for, I know that you did so visit Washington, and I am under the impression it was at the suggestion of the Secretary, but certainly at the request of the commissioners of the custom-house, and I have no doubt your expenses were paid and charged to construction, as I think it was a fair charge. The appropriations were large and more than was originally contemplated, and it was very proper to ask for and equally proper to explain the causes for the excess, which was next to impossible to explain by letter.

I believe I have in substance answered your inquiries and according to my best recollections on the subject. As you are aware, I was not able, from my constant official avocations, to devote much time to the superintendence of the new building. I had nothing to do with the disbursements of the money therefor or with keeping of the accounts. This was wholly under the responsibility of Mr. Bowne.

Very respectfully,

J. HOYT.

JOHN FRAZEE, Esq.,  
New York.

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*To the Senate and House of Representatives of the United States of America in Congress assembled :*

The memorial of John Frazee, of the city of New York, late architect and superintendent of the custom-house recently erected in that city, respectfully represents :

That on the 22d day of July, 1835, with the approbation of the Treasury Department, your memorialist was appointed architect and superintendent of the New York custom-house, at a salary of seven dollars per day, his travelling expenses on the business of his office to be paid, and an assistant, or draughtsman, was allowed him, at three dollars per day :

That when he was thus appointed the massive foundations of the building had been laid and reared even with the ground, and marble had been already wrought and finished at the quarries, some twenty miles from the city, under the direction of the former superintendent, and in accordance with plans which he had furnished, amounting in

value to more than fifty thousand dollars. These plans and drawings had, however, upon the resignation in May previous of that superintendent, been taken away by him, and he refused, upon application, to surrender them, and they never have been surrendered. This great and wholly unexpected difficulty was, however, overcome. The building was remodelled; plans, drawings, and specifications were furnished; the stone already wrought was rendered available; and all the various artisans engaged in the work were fully and successfully employed. In May, 1837, the labors of your memorialist having been greatly increased by the resignation of his assistant, the commissioners decided, with the approbation of the Secretary of the Treasury, to increase his pay to nine dollars per day, but to withhold, at the same time, the allowance for his travelling expenses. These expenses were unavoidable. Not a stone was laid in the building but in precise conformity with a plan previously furnished. Supervision of the work at the quarries was therefore indispensable, and visits were made to the quarries once or twice a week, at the cost of four and five dollars each visit, during the whole period of quarrying the stone. This additional compensation of your memorialist was further affected by the sums he found it indispensable to pay from time to time for the aid of assistant draughtsmen in the progress of the work.

Under this contract for the compensation of your memorialist the erection of the building went on, and nothing occurred to affect it or lessen its binding force until the autumn of 1840, when a difference arose between Walter Bowne, esq., one of the commissioners, and your memorialist, concerning the manner and style of finishing the interior and the furniture for the building. So much at variance with architectural propriety and good taste, in the opinion of your memorialist, were the views and plans of Mr. Bowne, that their adoption would have compromised the professional character of the architect. Your memorialist, therefore, did most strenuously oppose, and was sustained in his opposition to them by the opinion of the then collector and advisory commissioner, Mr. Hoyt, the result of which was the delivery to your memorialist of a paper, of which the following is a copy:

“NEW CUSTOM-HOUSE, *November 30, 1840.*

“*Resolved*, That the services of the superintendent and architect be dispensed with from and after the 5th December, 1840, and that his pay cease from that date.

“WALTER BOWNE,  
“*Commissioner and Agent, New York.*”

It was usual for resolutions relating to the affairs of the building to receive the signature and approval of the advisory commissioner, but both were in this instance withheld by Mr. Hoyt, who considered the course of Mr. Bowne unwarrantable and without excuse, and who remonstrated against the dismissal of your memorialist for a mere difference of opinion with Mr. Bowne while so much important work, requiring constant supervision of the architect, remained to be done.

The whole matter was submitted to the Secretary of the Treasury,

who referred it to the naval officer and surveyor of the customs at New York. On the 26th February, 1841, Mr. Coe, deputy naval officer, (in the absence of his principal,) and Mr. Moore, surveyor, reported their opinions upon the matters in controversy, fully sustaining all the views of your memorialist, and, amongst other things, said :

“ We would most respectfully beg leave to state it here, as our deliberate opinion, that justice cannot be done to Mr. Frazee without allowing him his usual compensation during the whole interval since his dismissal on the 5th December, 1840, he having been improperly dismissed, without cause,” &c.

Upon this report, and in conformity with its opinions, the Secretary, on the 3d March, 1841, directed that your memorialist should be “ CONTINUED ” in the situation of architect and superintendent until the completion of the building, and that his plans and designs for finishing the interior and for the furniture should be carried into effect.

Believing, as your memorialist did, that Mr. Bowne’s resolution of dismissal above referred to would not be sanctioned by the Secretary, your memorialist continued, by the advice and at the request of Mr. Hoyt, to attend daily, as usual, at the building, and to advise the workmen employed there until he received the Secretary’s letter *continuing* his services, as already mentioned, and by virtue of which he resumed the full discharge of his duties as superintendent and architect.

On the 23d March, 1841, Mr. Curtis succeeded to the collectorship of the port of New York, and soon after requested an interview with your memorialist ; it took place, and then, and subsequently, the collector expressed a strong desire to hasten the completion of the building and fit it for occupancy with the least delay ; the buildings then occupied as the custom-house were not only inconvenient but insecure, and the public records were not safe there. Your memorialist was asked when the new building could be completed and furnished, and if it could not be rendered habitable by August then next ; and, also if he could not consent to lessen his compensation for the few intervening months. In reply, a strong doubt was expressed of the possibility of finishing and furnishing the building by August ; and as to compensation, your memorialist, among other things, alluded to the suspension of his pay in consequence of the course pursued by Mr. Bowne, and said and consented, in case he received his back pay, to render his services gratuitously until the completion of the building *as fixed* by the collector. This, in truth, was the *spirit*, if not the letter, of his consent to serve gratuitously, but the contingency upon which this consent rested never happened ; the building was not finished in August, 1841, nor has your memorialist to this hour received his back pay ; besides, your memorialist has reason to believe that the collector soon after communicated to the Treasury Department this consent to serve gratuitously, and that no instructions on the subject have ever been given, nor has the receipt of it even been acknowledged by the Secretary of the Treasury.

Soon after the interview already mentioned the collector, in compliance with instructions from the treasury, contracted with a cabinet-



maker of this city for the furniture for the building, which, by the terms of the contract, was to be made after the designs and under the supervision of your memorialist. Of this furniture enough was finished on the 22d day of February, 1842, to enable the collector to occupy it as a custom-house; and on the 21st May, 1842, the state of the entire building and furniture was such as to allow and justify your memorialist in discharging the men employed and in bringing his anxious and responsible labors to a close, continued as they daily and exclusively had been from the day of his appointment, in July, 1835, through a period of six years and ten months.

For his services thus rendered your memorialist claims, agreeably to his account stated and hereto annexed, the sum of three thousand seven hundred and fifty dollars and thirty-nine cents as the balance now due him under his contract.

It has not been the purpose of your memorialist to attempt a history of the construction of the edifice, or of all of the many serious and perplexing difficulties which had to be surmounted in its progress; of these, however, none were more annoying than the occasional failures of Congress to make the usual annual and necessary appropriations. This, from time to time, rendered it expedient for your memorialist, in the opinion of the commissioners, to go to Washington to make the requisite explanations to the department and to the committees of Congress, and the expenses of such journeys were allowed and paid him. At the completion of the building various bills for labor, services, and materials, including his own, were due, and an appropriation was necessary for their payment, to aid in obtaining which your memorialist, by the advice of the collector, went to Washington, and his expenses for that journey form part of the balance which he claims.

An attempt had been made by one of the commissioners appointed to investigate the affairs of the New York custom-house to impugn the integrity of some of the contracts, and of the parties to them, for finishing and furnishing the building, which, with other circumstances, conspired to produce the reference of the whole subject of appropriations for that building to a select committee of the House of Representatives. That committee allowed to your memorialist a sum, which he received and has credited on his account herewith. Their report is a matter of record, and it is not alluded to now with the view of discussing its merits, or exposing its many fallacies, its unwarrantable inferences, or its false conclusions, for your memorialist well knows that his claim rests and will be determined upon its own merits, and not upon merits or demerits of that report; but he does allude to that report to say that the attempt made by it to fasten the infamous charge of forgery upon him was most signally defeated, as has been also a subsequent similar attempt to produce his removal, on the same charge, from a subordinate office in the customs, (which his necessities compelled him to ask and to accept,) as will appear by the documents hereto annexed.

Your memorialist has thus endeavored to present all the material facts relating to or affecting the contract under which his services have been rendered to the government, and by which a structure has been reared second to none on this continent, and calculated to endure for

ages. When he first entered upon the duties of his appointment he was much embarrassed; the payment of those debts and the maintenance and education of a large family, of twelve in number, have absorbed all of his salary but this small remnant of it. The untimely occupancy of a room in the building as his office, and exposure to its damps, has subjected him to disease, and he has reason to fear will render him infirm for the remainder of his days. This balance is all that remains to him of the anxious labors and untiring efforts of nearly seven years of his life. Does not his contract entitle him to demand it? Can Congress longer in justice withhold or delay the payment of it?

JOHN FRAZEE.

NEW YORK, *March 14, 1844.*

CITY AND COUNTY OF NEW YORK, ss:

John Frazee, of the city of New York, architect and sculptor, being duly sworn, deposes and says that all the facts and statements in the above memorial to Congress, unto which his name is subscribed, are, to the best of his knowledge and belief, most faithfully and substantially true and correct.

JOHN FRAZEE.

CITY AND COUNTY OF NEW YORK, ss:

I, Robert H. Morris, mayor of the city of New York, do hereby certify that on the 15th day of March, 1844, before me, personally appeared John Frazee, of this city, sculptor and architect, and made oath to the above affidavit by him thereunto subscribed.

Witness my hand and seal this 15th day of March, 1844.

[L. S.]

ROBERT H. MORRIS, *Mayor.*

*List of documents accompanying this memorial.*

Copy of letter from commissioners to the Secretary, relative to increase of pay of memorialist, dated May 19, 1837, marked A.

Copy of Secretary's letter to commissioner, approving of increase of pay, dated May 24, 1837, marked B.

Copy of deputy naval officer and surveyor's report to Secretary on the Bowne controversy, dated February 26, 1841, marked C.

Copy of Secretary's letter to Walter Bowne, dated March 3, 1841, marked D.

Copy of John Frazee's letter to Jesse Hoyt, late collector, dated March 1, 1844, and Mr. Hoyt's answer, dated March 6, marked E F.

Copy of Collector Curtis' letter to John Frazee, dated March 7, 1844, marked G.

John Frazee's account stated, balance \$3,750, marked H.

Printed pamphlet, entitled "Refutation of charges against John Frazee," marked I.

George F. Talman, successor to Walter Bowne, commissioner or disbursing agent, dated March, 1844, marked J.

Copy of McW. Francis', M. D., letter, dated March 8, 1844, marked K.

Transmitted by mail March 15, 1844. Directed to Hon. Silas Wright, U. S. Senate, Washington.

## UNITED STATES OF AMERICA.

TREASURY DEPARTMENT,  
*February 2, 1859.*

Pursuant to the act of Congress of February 22, 1849, I hereby certify that the annexed are true copies from the records and files of this department.

In witness whereof I have hereunto set my hand and caused the  
[L. s.] seal of the Treasury Department to be affixed on the day and  
year first above written.

HOWELL COBB,  
*Secretary of the Treasury.*

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CUSTOM-HOUSE, NEW YORK,  
*Februarg 26, 1841.*

SIR: In compliance with the request expressed in your letter of 22d instant, the undersigned have duly investigated the matter in controversy between Walter Bowne and Jesse Hoyt, esqrs., touching the completion of the new custom-house, the manner of finishing certain portions of the work, and also the discharge of Mr. Frazee, the architect and superintendent of the building. We beg leave to submit the following views and statements as the result of our investigations:

1st. As relates to the building being finished, we have been satisfactorily informed that stone-cutters, masons, carpenters, painters, iron-workers, and laborers have been constantly at work upon the building during the present winter. We find also that workmen in most of these several branches are still engaged upon the building, and that there is more or less work to be done in the several branches above enumerated before the building can be considered *as finished*.

2d. As relates to the dismissal of the architect and superintendent, Mr. Frazee, it is our most deliberate opinion and judgment that the superintendent of so important a structure as the new custom-house is the last person that should be discharged from the work; for we hold that his supervision over every part of the work is necessary to the well finishing of the edifice, and also to insure public confidence in its perfect completion.

The pay-list of the workmen, as we have seen, shows that at the time Mr. Frazee was dismissed, December 5, 1840, there were upwards of thirty workmen engaged upon the building, and that nearly the same number were continued upon the work for several weeks afterwards, and, as has already been stated, a number of workmen are still employed upon the building. Thus it appears that during a period of nearly two months this important edifice has been progressing towards completion without the superintendence of any person properly qualified to direct the workmen in the various and difficult branches in which they were engaged. In view of these facts and considerations, we feel constrained to regard the resolution of Mr. Bowne, dis-

missing the architect and superintendent without cause or provocation, as an act of gross injustice to one of the first artists of the age, as well as detrimental to the public interests. And as there appears to be much work still to be done upon the building which requires the professional skill and superintending services of Mr. Frazee, we would recommend that he be immediately reinstated. We would also most respectfully beg leave to state it here as our deliberate opinion that justice cannot be done Mr. Frazee without allowing him his usual compensation, covering the whole interval of time since his dismissal on the 5th of December, 1840, he having been improperly dismissed, without cause, and thereby unexpectedly thrown out of employment, greatly prejudicial to his interests.

3d. With regard to the fly-doors constructed under the direction of Mr. Bowne at the two entrances, we would state that we fully concur in opinion with Mr. Hoyt and Mr. Frazee, that the constructing of the wooden doors outside of the iron ones greatly impairs the beauty and harmony of the architecture at these entrances; besides, they are so ill-constructed as entirely to defeat the objects for which they were designed. We would therefore recommend that they be taken down and the proper casements and fly-doors be constructed by the direction and under the superintendence of Mr. Frazee.

4th. With respect to the finish to be put upon the iron work, we would remark that in our opinion there is no other way of giving to it a finish in suitable keeping with the other parts of the building but that of bronzing, and such is the general opinion expressed here by all those whose attention has been called to the subject. And as to the most suitable time for putting on the bronze finish, as well as the manner and style of its execution, it should, we conceive, be left entirely to the judgment of the architect.

5th. In reference to the furniture, we would state that as the counters which are already put up in several of the rooms, however objectionable they may be, are only intended for temporary use until suitable furniture can be made, we forbear making any particular remarks on this part of the subject; we would observe, however, that the design and planning of the new furniture, agreeably to the economy and arrangements which may be suggested by the officers of the various departments, are things which should, in our judgment, command the taste, skill, and superintendence of the architect of the edifice; and that he also be permitted to select the mechanics who are to execute and put up this kind of work.

The foregoing are the conclusions at which we have arrived after due investigation and reflection. All of which is respectfully submitted.

With great respect, your obedient servant,

GEORGE W. COE,  
*Deputy Naval Officer.*

ELY MOORE, JR.,  
*Surveyor.*

Hon. LEVI WOODBURY,  
*Secretary of the Treasury.*



TREASURY DEPARTMENT, *March 3, 1841.*

SIR: For your information I transmit herewith a copy of my communication of this date to Walter Bowne, esq., commissioner, &c., respecting yourself and other matters connected with the new custom-house building.

I am, &c.,

LEVI WOODBURY,  
*Secretary of the Treasury.*

JOHN FRAZEE, Esq.,  
*Superintendent and Architect, &c., New York.*

TREASURY DEPARTMENT, *March 3, 1841.*

SIR: The department having called upon the deputy naval officer and surveyor at New York to report their joint views in regard to the difference of opinion existing between yourself and Mr. Hoyt respecting certain matters connected with the new custom-house building, they have accordingly complied with my request.

In accordance with their recommendation, I deem it proper to authorize Mr. John Frazee to be continued in the situation of superintendent and architect of the building from the date of the passage of the general appropriation bill until the custom-house and the furnishing of the respective rooms shall have been completed; and it is desirable that Mr. Frazee's plans for the interior arrangements of the building should be carried into effect so far as regards the arrangement of the fly-doors, furniture, and painting of the iron work.

I am, &c.,

LEVI WOODBURY,  
*Secretary of the Treasury.*

WALTER BOWNE, Esq.,  
*Commissioner, &c., New York.*

UNITED STATES COURT OF CLAIMS.

LYDIA FRAZEE *vs.* THE UNITED STATES.

*Depositions of witnesses produced, sworn, and examined in the above entitled cause on the part of the petitioner.*

DECEMBER 6, 1856.

The petitioner appears, by E. J. Phelps, esq., her counsel—no one appearing on behalf of the government.

Stephen C. Duryea, being sworn and examined on the part of the petitioner, deposes and says as follows:

My name is Stephen C. Duryea; I am employed in the county clerk's office of the city of New York; I am in my forty-third year; I have resided in New York all my life; I have no interest, direct or

indirect, in the claim which is the subject of inquiry in above action ; and I am distantly related to the petitioner ; the claimant's father and my father were half brothers.

Question. Were you acquainted with John Frazee in his lifetime, and how long ?

Answer. I was acquainted with him during the twelve years preceding his death.

Question. What was his profession ?

Answer. He was a sculptor and architect.

Question. What, in your judgment, were his qualifications and standing in that profession ?

Answer. As far as I could judge, I should think him one of the best in the country.

Question. Did you know of his being employed as architect and superintendent in the erection of the New York custom-house ?

Answer. I did.

Question. How early did you know of his being engaged upon the custom-house ?

Answer. I know of his being so employed in 1840, and sometime earlier.

Question. How late did you know of his being so employed ?

Answer. Until the spring of 1842, the early part of the spring.

Question. During the time he was so employed, what proportion of his time did he devote to this business ?

Answer. He made it his business to attend to the erection of the custom-house ; he had no other business that I am aware of ; he gave all the time to it that his health permitted, and I have known him to go there in a carriage when he was not really well enough safely to go out. He was the principal architect and superintendent employed on the work.

Question. Did you know of his making journeys to Washington on business of the custom-house ?

Answer. I did. I recollect of his going twice. I cannot specify how many times more.

Question. Do you know whether he prepared the plans and drawings for the custom-house ?

Answer. I know of his being occupied in preparing plans and drawings for that purpose.

Question. Do you know of his superintending the construction of the furniture for the custom-house ?

Answer. I went with him on several occasions, and heard him give directions about the furniture for the custom-house.

Question. Do you recollect of his superintending the finishing and ornamental work for the custom-house ?

Answer. I recollect going there with him several times, and know of his giving directions as to this part of the work ; on one occasion in particular, as to the lettering over the doors.

Question. Do you know anything of the compensation usually received by architects for professional services ?

Answer. I do not ; but I consider him proficient in his profession, and entitled to as much for his services as any other in the profession.

Question. Can you state what induced the disease of which Mr. Frazee died?

Answer. He was ill at times during his superintendence of the custom-house. I was with him often when he was ill, and I believe this illness was occasioned by his exposure to dampness in the room he occupied in the basement of the custom-house while engaged there. I do not think he was ever well afterwards.

Question. Do you know of any other matter relative to the matter in question?

Answer. Mr. Frazee became very much embarrassed in his circumstances, and, towards the close of his life, destitute, in consequence of the withholding by the government of his compensation; his property, including some real estate in this city, was sacrificed; his health was very much impaired; he was mentally a great deal broken down by the embarrassment and disappointment thus occasioned; he left nothing for his family after his death. I know nothing further as to this claim that I now recollect.

STEPHEN C. DURYEA.

Adjourned to February 19, 1857.

FEBRUARY 19, 1857.

The petitioner appears, by E. J. Phelps, esq., her counsel—no one appearing on behalf of the government.

R. E. Launitz, being sworn and examined on the part of the petitioner, deposes and says as follows:

My name is R. E. Launitz; I am a sculptor by profession; I have resided in New York for many years, ever since 1828; I am forty years of age and upwards; I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action, and I am in no way related or connected with the claimant.

Question. Did you know the late John Frazee; what was his profession, and what were his qualifications and standing in his profession?

Answer. I was acquainted with him; he was a sculptor and architect of very high accomplishments and standing.

Question. Did you know of his being engaged as architect and superintendent of the New York custom-house when building, and from what time to what time?

Answer. I knew Mr. Frazee was engaged as architect and superintendent of the custom-house while it was being constructed; he commenced under his first appointment in the year 1836; I know the date from having been at that time, and for a few months after, his partner; he continued in the work until December, 1840, when he was discharged by Mr. Bowne; after that, about the 3d of March, 1841, he was reappointed by the Secretary of the Treasury, and continued to act as superintendent until the building was finished, and taken possession of by the government, which was in the summer of 1842; he also designed all the fixtures, railings, &c.

Question. While Mr. Frazee was so engaged, what proportion of

his time did he give to the work, and how diligently did he apply himself to it?

Answer. To the best of my knowledge, all the time—from morning till night; he had no other business; he superintended the whole work; he made all the models and drawings; I have now in my possession all these original drawings; I took them of him for a debt; he employed a young man as draughtsman, whom he paid out of his own pocket; he made the custom-house his hobby, and spared no time nor study, thinking it would establish his reputation.

Question. What were Mr. Frazee's services worth by the day while he was engaged in the work?

Answer. Considering his reputation and his talents, I should think ten dollars a day would have been a fair compensation, considering he had constant employment.

Question. What was the effect on Mr. Frazee's health by his employment on the custom-house?

Answer. The dampness of the building was such that he contracted a chronic rheumatism, of which he never recovered; it made a complete cripple of him, so that he could not work or write; before he died he was so reduced in circumstances that a subscription was raised for him among his brother artists.

Question. Did you know of Mr. Frazee, while he was engaged on the custom-house, having to visit the quarries from which the marble was obtained for the custom-house, and how often?

Answer. I know that he kept a horse and buggy for that purpose; he used to visit the quarries, but I cannot tell how often.

Question. Do you know of his being called on to visit Washington on the business of the custom-house, and how often, and for how long time?

Answer. I know he had to go on that business to Washington several times; I cannot tell by what authority, nor how long he remained there.

Question. What effect upon Mr. Frazee's circumstances did his failure to obtain his compensation from government produce?

Answer. He was unable to pay the living expenses of his family; he was always dependent upon his profession for his support; I used to lend him money; he once offered me his wife's watch as security, which I declined to take.

ROB'T E. LAUNITZ.

JUNE 29, 1857.

The claimant appeared, by E. J. Phelps, esq., to proceed with the examination.

Dr. John W. Francis, a witness produced and sworn on the part of the claimant, testified as follows:

My name is John W. Francis; I am a physician; am upwards of sixty years of age; I have resided in the city of New York for the past, and for many years; I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action, and I am not related to the petitioner.



Question. Were you acquainted with the late John Frazee, and how long before his death?

Answer. I was acquainted with him for twenty years before his death.

Question. What, in your judgment, were Mr. Frazee's abilities and acquirements as an architect, and his standing in that profession?

Answer. He was considered a man of great genius; before his connexion with the custom-house he had acquired a high reputation as an architect and sculptor, particularly as a sculptor; he was acknowledged to be a man of great taste as an architect; and the examination of the custom-house in New York by enlightened foreigners, who have visited this place from time to time, has often led to the remark that the custom-house is the only real fire-proof building in this city, and is a triumph of mechanical skill; his private character was that of a man of great integrity, of temperate habits, of untiring industry, and of great devotion to his professional calling.

Question. Do you know anything of his services in the erection of the custom-house?

Answer. I know that he was incessantly occupied with it, late and early, and that all his thoughts seemed occupied upon it.

Question. Do you know anything of his last sickness?

Answer. He suffered a great deal from rheumatic attacks of the body and affections of the chests, superinduced by exposure to the changes and vicissitudes of the seasons, and the dampness of the custom-house while in the state of erection. I believe the labors upon that edifice shortened his life. He suffered considerable mental disappointment and distress from his pecuniary transactions with the government and the postponement of his claims.

Question. Do you know of any other matter relative to the matter in question?

Answer. I am not aware that I do.

JOHN W. FRANCIS, *M. D.*,  
*New York.*

JULY, 1, 1857.

The claimant appeared, by E. J. Phelps, esq., to proceed with the examination.

Jesse Hoyt, a witness produced and sworn on the part of the claimant, testified as follows:

My name is Jesse Hoyt; I am a counsellor at law; I have resided in New York for many years; I am fifty years of age and upwards; I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action, and am not related to or connected with the petitioner.

Question. Were you collector of the port of New York, and during what time?

Answer. I was, from the 29th of March, 1838, to the close of February, 1841. The new custom-house, so called, was in the process of erection during that period, and I was *ex officio* a commissioner for building the new custom-house.

Question. What do you know of the services of Mr. John Frazee as architect and superintendent of the custom-house?

Answer. When I went into office Mr. Frazee was occupied as architect and superintendent of the custom-house, and he had been so for a long time previous thereto. He continued to act in that capacity until the building was completed, with the reservation hereafter to be mentioned, that is to say : sometime in the beginning of December, 1840, Mr. Walter Bowne, the chief commissioner, without consulting or advising with the deponent, took upon himself the responsibility of dismissing Mr. Frazee from the station referred to, Mr. Bowne assuming that the custom-house was finished. Deponent was informed of that proceeding by Mr. Frazee, when *deponent advised Mr. Frazee to remain in the building as usual, until deponent could make a report to Mr. Woodbury, then Secretary of the Treasury, and obtain his directions thereon.* Mr. Bowne and deponent were so far apart in their views upon the question, that the Secretary referred the matter, as deponent is informed, to the naval officer and surveyor of the port to report upon the difference of opinion that existed between Mr. Bowne and deponent. Those officers made their report to the Secretary, confirming the views of the deponent, as deponent thinks ; whereupon the Secretary of the Treasury directed that Mr. Frazee be continued as architect and superintendent ; and he did so continue until it was conceded that the custom-house was completed by the Treasury Department. Deponent on one occasion, and deponent thinks in March, 1844, when the subject was more fresh in the mind of deponent than it could be at present, wrote a letter to Mr. Frazee on the subject, the draught of which letter was destroyed by fire at the office of deponent some three or four years since ; but if petitioner should have the original letter as engrossed, deponent would prefer that it should be attached to this deposition.

Question. What, in your opinion, was the ability and standing of Mr. Frazee in his profession, and what the character of his services upon this work ?

Answer. Mr. Frazee was a great enthusiast in his profession ; his character as a man of science in that profession stood very high ; he was very much devoted to the building as a matter of professional pride as well as duty. Deponent was so much occupied by the duties of his office proper that he had not the opportunity to devote any particular attention to the work as it progressed, and he only attended the commissioners when officially necessary. The financial accounts of the commission were kept entirely under the control of Mr. Bowne, and deponent never saw or examined them.

Question. Do you recollect Mr. Frazee's journeys to Washington on the business of the commission ?

Answer. He made several during the progress of the work.

Question. What, at that time, was the usual expense of a journey to Washington, apart from the expense of remaining there ?

Answer. Deponent went to Washington but one time during the whole time he was in office. The expense at that day was about thirty dollars.

Question. Do you know of any other matter relative to the matter in question ?

Answer. Deponent thinks he might state here that one of the

causes of differences of opinion between deponent and Mr. Bowne, his associate, was the danger that would arise to the health of the officers of the customs who were to occupy the building if they took possession at that season of the year, and in the condition in which the building then was ; and deponent is under the impression and belief that the health of Mr. Frazee was very much affected by being almost constantly under the influence of the atmosphere of the building.

J. HOYT.

UNITED STATES OF AMERICA, *State, City, and County of New York, ss :*

On the several days as hereinbefore stated, before me, a commissioner of the Court of Claims, personally came Stephen C. Duryea, Robert E. Launitz, John W. Francis, and Jesse Hoyt, witnesses above named for the claimant, and after having been sworn severally to tell the truth, the whole truth, and nothing but the truth, the questions contained in their within depositions, respectively, were written down in the presence of and proposed to the witnesses ; and the answers thereto were also written down in presence of the witnesses, who subscribed their depositions as certified by me.

The said depositions of Stephen C. Duryea, Robert E. Launitz, John W. Francis, and Jesse Hoyt, were taken by me, at the request of Wakeman, Latting, and Phelps, counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Lydia Frazee. The government, as appears by the notice and admission of service herewith, was notified, but did not attend or object.

JOHN C. DEVEREUX,  
*Court of Claims Commissioner.*

COURT OF CLAIMS.

LYDIA FRAZEE *vs.* THE UNITED STATES.

I hereby certify that the above is a true copy of depositions taken and returned by me in this case.

JOHN C. DEVEREUX,  
*Commissioner, &c.*

NEW YORK, *August 7, 1857.*

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COURT OF CLAIMS.

LYDIA FRAZEE, claimant, *vs.* THE UNITED STATES.

*Notice of taking depositions.*

SIR : The court having authorized the taking of depositions in this case, you are hereby notified that the following witnesses, namely : James Stone, George F. Talman, Jesse Hoyt, George W. Coe, Ely Moore, Daniel Jackson, Alexander Masterton, James Hall, Robert E.

Launitz, John McKeon, Martin E. Thompson, George Griswold, Stephen S. Duryea, John R. Place, Cornelius R. Bogardus, Joseph Wilson, and William L. Swan, will be examined, on behalf of the claimant above named, before John C. Devereux, esq., one of the permanent commissioners of this court, residing in the city of New York, at the office of the said commissioner, No. 110 Broadway, in the city of New York, on the 2d day of December, 1856, at 12 o'clock at noon of that day.

Yours, &c.,

JNO. J. LATTING,  
*Solicitor for Claimant.*

MONTGOMERY BLAIR, Esq.,  
*Solicitor for the United States.*

NEW YORK, November 14, 1856.

I admit due service of a notice, of which the foregoing is a copy, at Washington city, D. C., this 15th day of November, 1856.

M. BLAIR, *United States Solicitor.*

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UNITED STATES COURT OF CLAIMS.

LYDIA FRAZEE *vs.* THE UNITED STATES.

*Depositions of witnesses produced, sworn, and examined in the above entitled cause on the part of the petitioner.*

DECEMBER 6, 1856.

The petitioner appears, by E. J. Phelps, esq., her counsel—no one appearing on behalf of the government. (Adjourned from December 2, 1856.)

Stephen C. Duryea, being sworn and examined on the part of the petitioner, deposes and says as follows :

My name is Stephen C. Duryea ; I am employed in the county clerk's office of the city of New York ; I am in my forty-third year ; I have resided in New York all my life ; I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action ; and I am distantly related to the petitioner ; the claimant's father and my father were half brothers.

Question. Were you acquainted with John Frazee in his lifetime, and how long ?

Answer. I was acquainted with him during the twelve years preceding his death.

Question. What was his profession ?

Answer. He was a sculptor and architect.

Question. What, in your judgment, were his qualifications and standing in that profession ?

Answer. As far as I could judge, I should think him one of the best in the country.

Question. Did you know of his being employed as architect and superintendent in the erection of the New York custom-house ?



Answer. I did.

Question. How early did you know of his being engaged upon the custom-house?

Answer. I know of his being so employed in 1840, and sometime earlier.

Question. How late did you know of his being so employed?

Answer. Until the spring of 1842, the early part of the spring.

Question. During the time he was so employed, what proportion of his time did he devote to this business?

Answer. He made it his business to attend to the erection of the custom-house. He had no other business, that I am aware of. He gave all the time to it that his health permitted; and I have known him to go there in a carriage when he was not really well enough safely to go out. He was the principal architect and superintendent employed on the work.

Question. Did you know of his making journeys to Washington on business of the custom-house?

Answer. I did. I recollect of his going twice. I cannot specify how many times more.

Question. Do you know whether he prepared the plans and drawings for the custom-house?

Answer. I know of his being occupied in preparing plans and drawings for that purpose.

Question. Do you know of his superintending the construction of the furniture for the custom-house?

Answer. I went with him on several occasions, and heard him give directions about the furniture for the custom-house.

Question. Do you recollect of his superintending the finishing and ornamental work for the custom-house?

Answer. I recollect going there with him several times, and know of his giving directions as to this part of the work, on one occasion in particular, as to the lettering over the doors.

Question. Do you know anything of the compensation usually received by architects for professional services?

Answer. I do not; but I consider him proficient in his profession, and entitled to as much for his services as any other in the profession.

Question. Can you state what induced the disease of which Mr. Frazee died?

Answer. He was ill at times during his superintendence of the custom-house. I was with him often when he was ill; and I believe this illness was occasioned by his exposure to dampness in the room he occupied in the basement of the custom-house while engaged there. I do not think he was ever well afterwards.

Question. Do you know of any other matter relative to the matter in question?

Answer. Mr. Frazee became very much embarrassed in his circumstances, and, towards the close of his life, destitute, in consequence of the withholding by the government of his compensation. His property, including some real estate in this city, was sacrificed; his health was very much impaired; he was mentally a great deal broken down

by the embarrassment and disappointment thus occasioned. He left nothing for his family after his death.

I know nothing further as to this claim that I now remember.

STEPHEN C. DURYEA.

Witness :

JOHN C. DEVEREUX,  
*Commissioner, &c.*

Adjourned to February 19, 1857.

FEBRUARY 19, 1857.

The petitioner appears, by E. J. Phelps, esq., her counsel—no one appearing on behalf of the government.

R. E. Launitz, being sworn and examined on the part of the petitioner, deposes and says as follows :

My name is R. E. Launitz ; I am a sculptor by profession ; I have resided in New York for many years, ever since 1828 ; I am forty years of age and upwards ; I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action ; and I am in no way related or connected with the claimant.

Question. Did you know the late John Frazee ? What was his profession, and what were his qualifications and standing in his profession ?

Answer. I was acquainted with him ; he was a sculptor and architect of very high accomplishments and standing.

Question. Did you know of his being engaged as architect and superintendent of the New York custom-house when building ; and from what time to what time ?

Answer. I knew Mr. Frazee was engaged as architect and superintendent of the custom-house while it was being constructed. He commenced under his first appointment in the year 1836. I know the date from having been at that time, and for a few months after, his partner. He continued in the work until December, 1840, when he was discharged by Mr. Bowne. After that, about the 3d of March, 1841, he was reappointed by the Secretary of the Treasury, and continued to act as superintendent until the building was finished and taken possession of by the government, which was in the summer of 1842. He also designed all the fixtures, railings, &c.

Question. While Mr. Frazee was so engaged, what proportion of his time did he give to the work ; and how diligently did he apply himself to it ?

Answer. To the best of my knowledge, all the time—from morning till night. He had no other business. He superintended the whole work ; he made all the models and drawings. I have now in my possession all these original drawings. I took them of him for a debt. He employed a young man as draughtsman, whom he paid out of his own pocket. He made the custom-house his hobby, and spared no time nor study, thinking it would establish his reputation.

Question. What were Mr. Frazee's services worth by the day while he was engaged in the work ?

Answer. Considering his reputation and his talents, I should think ten dollars a day would have been a fair compensation, considering he had constant employment.

Question. What was the effect on Mr. Frazee's health by his employment on the custom-house?

Answer. The dampness of the building was such that he contracted a chronic rheumatism, of which he never recovered. It made a complete cripple of him, so that he could not work or write. Before he died he was so reduced in circumstances, that a subscription was raised for him among his brother artists.

Question. Did you know of Mr. Frazee, while he was engaged on the custom-house, having to visit the quarries from which the marble was obtained for the custom-house, and how often?

Answer. I know that he kept a horse and buggy for that purpose. He used to visit the quarries, but I cannot tell how often.

Question. Do you know of his being called on to visit Washington on the business of the custom-house, and how often, and for how long time?

Answer. I know he had to go on that business to Washington several times. I cannot tell by what authority, nor how long he remained there.

Question. What effect upon Mr. Frazee's circumstances did his failure to obtain his compensation from government produce?

Answer. He was unable to pay the living expenses of his family. He was always dependent upon his profession for his support. I used to lend him money; he once offered me his wife's watch as security, which I declined to take.

ROBERT E. LAUNITZ.

Witness:

JOHN C. DEVEREUX,  
*Commissioner, &c.*

JUNE 29, 1857.

The claimant appeared, by E. J. Phelps, esq., to proceed with the examination.

Dr. John W. Francis, a witness produced and sworn on the part of the claimant, testified as follows:

My name is John W. Francis; I am a physician; am upwards of sixty years of age. I have resided in the city of New York for the past, and for many years. I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action, and I am not related to the petitioner.

Question. Were you acquainted with the late John Frazee, and for how long before his death?

Answer. I was acquainted with him for twenty years before his death.

Question. What, in your judgment, were Mr. Frazee's abilities and acquirements as an architect and his standing in that profession?

Answer. He was considered a man of great genius. Before his connexion with the custom-house he had acquired a high reputation as an architect and sculptor, particularly as a sculptor. He was acknowledged to be a man of great taste as an architect; and the ex-

amination of the custom-house in New York, by enlightened foreigners, who have visited this place from time to time, has often led to the remark that the custom-house is the only real fire-proof building in this city, and is a triumph of mechanical skill. His private character was that of a man of great integrity, of temperate habits, of untiring industry, and of great devotion to his professional calling.

Question. Do you know anything of his services in the erection of the custom-house?

Answer. I know that he was incessantly occupied with it late and early, and that all his thoughts seemed to be occupied upon it.

Question. Do you know anything of his last sickness?

Answer. He suffered a great deal from rheumatic attacks of the body and affections of the chest, superinduced by exposure to the changes and vicissitudes of the season and the dampness of the custom-house while in the state of erection. I believe the labors upon that edifice shortened his life. He suffered considerable mental disappointment and distress from his pecuniary transactions with the government and the postponement of his claims.

Question. Do you know of any other matter relative to the matter in question?

Answer. I am not aware that I do.

JOHN W. FRANCIS, *M. D.*,  
*New York.*

Witness:

JOHN C. DEVEREUX,  
*Commissioner.*

JULY 1, 1857.

The claimant appeared, by E. J. Phelps, esq., to proceed with the examination.

Jesse Hoyt, a witness produced and sworn on the part of the claimant, testified as follows:

My name is Jesse Hoyt; I am a counsellor at law; I have resided in New York for many years; I am fifty years of age and upwards; I have no interest, direct or indirect, in the claim which is the subject of inquiry in above action; and am not related to or connected with the petitioner.

Question. Were you collector of the port of New York, and during what time?

Answer. I was, from the 29th of March, 1838, to the close of February, 1841. The new custom-house, so-called, was in the process of erection during that period, and I was *ex officio* a commissioner for building the new custom-house.

Question. What do you know of the services of Mr. John Frazee as architect and superintendent of the custom-house.

Answer. When I went into office Mr. Frazee was occupied as architect and superintendent of the custom-house, and he had been so for a long time previous thereto. He continued to act in that capacity until the building was completed, with the reservation hereafter to be mentioned, that is to say: sometime in the beginning of December, 1840, Mr. Walter Bowne, the chief commissioner, without consulting

or advising with the deponent, took upon himself the responsibility of dismissing Mr. Frazee from the station referred to, Mr. Bowne assuming that the custom-house was finished. Deponent was informed of that proceeding by Mr. Frazee, when deponent advised Mr. Frazee to remain in the building as usual, until deponent could make a report to Mr. Woodbury, then Secretary of the Treasury, and obtain his directions thereon. Mr. Bowne and deponent were so far apart in their views upon the question, that the Secretary referred the matter, as deponent is informed, to the naval officer and surveyor of the port to report upon the difference of opinion that existed between Mr. Bowne and deponent. Those officers made their report to the Secretary, confirming the views of the deponent, as deponent thinks; whereupon the Secretary of the Treasury directed that Mr. Frazee be continued as architect and superintendent; and he did so continue until it was conceded that the custom-house was completed by the Treasury Department. Deponent, on one occasion, and deponent thinks in March, 1844, when the subject was more fresh in the mind of deponent than it could be at present, wrote a letter to Mr. Frazee on the subject, the draught of which letter was destroyed by fire at the office of deponent some three or four years since; but if the petitioner should have the original letter as engrossed, deponent would prefer that it should be attached to this deposition.

Question. What, in your opinion, was the ability and standing of Mr. Frazee in his profession, and what the character of his services upon this work.

Answer. Mr. Frazee was a great enthusiast in his profession, his character as a man of science in that profession stood very high; he was very much devoted to the building as a matter of professional pride as well as duty. Deponent was so much occupied by the duties of his office proper that he had not the opportunity to devote any particular attention to the work as it progressed, and he only attended the commissioners when officially necessary. The financial accounts of the commission were kept entirely under the control of Mr. Bowne, and deponent never saw nor examined them.

Question. Do you recollect Mr. Frazee's journeys to Washington on the business of the commission?

Answer. He made several during the progress of the work.

Question. What at that time was the usual expense of a journey to Washington, apart from the expense of remaining there?

Answer. Deponent went to Washington but one time during the whole time he was in office. The expense at that day was about thirty dollars.

Question. Do you know of any other matter relative to the matter in question?

Answer. Deponent thinks he might state here that one of the causes of differences of opinion between deponent and Mr. Bowne, his associate, was the danger that would arise to the health of the officers of the customs who were to occupy the building if they took possession at that season of the year, and in the condition in which the building then was; and deponent is under the impression and belief that



the health of Mr. Frazee was very much affected by being almost constantly under the influence of the atmosphere of the building.

J. HOYT.

Witness:

J. C. DEVEREUX,  
*Commissioner, &c.*

UNITED STATES OF AMERICA, }  
*State, City, and County of New York,* } ss:

On the several days as hereinbefore stated, before me, a commissioner of the Court of Claims, personally came Stephen C. Duryea, Robert E. Launitz, John W. Francis, and Jesse Hoyt, witnesses above named for the claimant, and after having been sworn, severally, to tell the truth, the whole truth, and nothing but the truth, the questions contained in their written depositions, respectively, were written down in the presence of and proposed to the witnesses; and the answers thereto were also written down in presence of the witnesses, who subscribed their depositions as certified by me.

The said depositions of Stephen C. Duryea, Robert E. Launitz, John W. Francis, and Jesse Hoyt, were taken by me at the request of Wakeman, Latting, and Phelps, counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Lydia Frazee. The government, as appears by the notice and admission of service herewith, was notified, but did not attend or object.

JOHN C. DEVEREUX,  
*Court of Claims Commissioner.*

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UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, *March 18, 1859.*

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed papers are true copies of letters taken from the files and records of this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

HOWELL COBB,  
*Secretary of the Treasury.*

A.

OFFICE OF THE COMMISSION FOR BUILDING CUSTOM-HOUSE,  
*New York, February 2, 1841.*

SIR: Your letter of the 30th ultimo is received. In reply, we state that the building is entirely finished; and with regard to the furnishing thereof, that the counters and desks for the collector's and naval officers' rooms will be done in ten days.

Since the superintendent has been paid off, no work, except point-

ing marble joints, cleaning and scrubbing down the building, has been done, except for contracts and specific agreements for laying flagging, &c., which, obviously, required no aid of the superintendent.

We have not, in the slightest manner, made any innovations on the architectural plans for finishing the building. The difference of opinion in furnishing for occupancy is between an *architect* and *business men*. The architect's arrangement would cause long delay and expense to a large amount, whilst the others will be completed in less than one month, and at an expense of less than fifteen thousand dollars.

Bronzing the iron work, if considered necessary, and that the light will permit, should not be done for a year or two.

The entrance doors to this building are constructed with an upper stationary door, which shows a double panel of the door in all its beauty. The fly-doors are put up in a range with the doors to open, and do not obstruct the view of them. These fly-doors are very neatly finished, and on the same plan as the banks lately put up in Wall street. A temporary fly-door is contemplated to be put up inside the large room door entrance.

There only remains, to complete entirely this great work, the finishing of the area on Nassau street, and the putting up iron railings outside, which is delayed by the winter. It will not, however, require six days to do this work when the ice disappears. Our opinion is that no further service is required of Mr. Frazee.

We are, sir, very respectfully, your obedient servants,  
WALTER BOWNE,  
*Commissioner.*

Hon. LEVI WOODBURY,  
*Secretary of the Treasury, Washington.*

Mr. Hoyt will probably write to you himself.

W. B.

B.

CUSTOM-HOUSE, *New York, March 25, 1841.*

SIR: There was a long-continued controversy between John Frazee, architect of the custom-house, and Walter Bowne, esq., the acting commissioner. The late Secretary, after much inquiry and examination, decided that Mr. Frazee should go on to finish the custom-house, and furnish it in *his* own way and without the interference of Mr. Bowne, who differs in opinion with the architect.

Mr. Bowne, I am told, claims heavy compensation from the United States for his services; and, to save further expense, he ought to be dismissed, and required to render his account.

Charles A. Davis, esq., of the firm of Davis, Brooks & Co., merchants of high standing, has consented, at my request, to act as commissioner in the place of Mr. Bowne, *without compensation.*

Mr. Frazee, the architect, has agreed with me, in case Mr. Bowne

be removed, to serve *for nothing* from and after the first day of May next. I enclose his note to me, making that offer.

Mr. Rodman, clerk in your office, is acquainted with this whole subject. If you wish to know anything more of Mr. Davis, you may learn of Mr. Granger or Mr. Webster. He is the real *Jack Downing*, a very distinguished friend of Mr. Clay, and a high-minded, honorable and respectable person.

Very respectfully, yours, &c.,

EDWARD CURTIS.

Hon. THOMAS EWING,  
*Secretary of the Treasury.*

C.

NEW CUSTOM-HOUSE,  
*New York, March 23, 1841.*

SIR: It is far from my wishes, and ever has been, to be the cause of any unnecessary expenditures upon this building beyond what strict propriety, good taste and good sense seemed to require. I have added no expense whatever which was not proper in the carrying out and completing this edifice agreeably to the designs and plans that were approved of and authorized by the government.

To convince you that I am desirous to give my support to a judicious economy with the public treasure, I will, from and after the first day of May next, render my service upon the building, as superintendent and architect, until every part of the work shall be completed, without charge or compensation.

I am, very truly, yours,

JOHN FRAZEE.

EDWARD CURTIS, Esq.,  
*Collector of the Customs, New York.*

D.

TREASURY DEPARTMENT, *April 12, 1841.*

SIR: The quarterly account of disbursements for the new custom-house, forwarded in your letter of the 1st instant, has, with the accompanying vouchers, been referred to the accounting officers of the treasury for adjustment.

The department having appointed George F. Tallman, esq., of New York, commissioner and disbursing agent for the new custom-house, you are, consequently, relieved from the future discharge of those duties.

I have, therefore, respectfully to request you to hand over to Mr. Tallman all books and papers belonging to the office, together with any public funds remaining in your hands unexpended.

I am, &c.,

T. EWING,  
*Secretary of Treasury.*

WALTER BOWNE, Esq.,  
*Late Comm'r and Disbursing Ag't., &c., New York.*

U. S. COURT OF CLAIMS.

LYDIA FRAZEE, ADMINISTRATRIX, *vs.* THE UNITED STATES.

*Brief for the claimant.*

The petition sets forth that John Frazee, whom the claimant represents as administratrix, was employed by the commissioners for the erection of the New York custom-house, under the authority of the Secretary of the Treasury, as architect and superintendent of that work, from July 22, 1835, to May 21, 1842, when it was completed; that his compensation (after May 24, 1837, when it was increased by the Secretary of the Treasury,) was to be nine dollars per diem; that he faithfully and ably performed the required duty; and that the government is still indebted to him for four hundred and fifty-six days' services, and for two hundred and seven dollars and thirty-nine cents expenses incurred in travelling to Washington on the necessary business of his employment, at the request of the commissioners who had it in charge, deducting the sum of five hundred and sixty-one dollars subsequently received.

Thus—456 days, at \$4.....	\$4,104 00
Travelling expenses.....	207 39
	<hr/>
	4,311 39
Payment.....	561 00
	<hr/>
	3,750 39
	<hr/>

The claim rests upon an express contract with the government, entered into on their part by the proper officers, acting under legal authority, and fully performed on the part of the claimant, resulting in a benefit to the government far exceeding the stipulated compensation.

If these facts are established, there can be no question as to the claimant's right.

The employment of Mr. Frazee as early as 1837, and the compensation he was to receive, is shown by the letter of May 19, 1837, from the commissioners for building the custom-house to the Secretary of the Treasury, and his reply, dated May 24, 1837, (Ex. Nos. 1 and 2.) The commissioners' letter speaks of "the close application and arduous services of Mr. Frazee in his situation of superintendent and architect," expresses "entire confidence in his talents and ability to carry forward the building to its completion," &c., and recommend an increase of his compensation from seven to nine dollars per diem. The reply of the Secretary authorizes the proposed increase.

Also by the letter of the Secretary of the Treasury to Walter Bowne, one of the commissioners, dated March 3, 1841, (Ex. No. 3,) in which, referring to a difference between Mr. Frazee and one of the commissioners who had undertaken to dismiss him, the Secretary directs that he "be *continued* in his situation of superintendent and architect from the date of the passage of the appropriation bill of that year

until *the completion of the work*," and the Secretary's letter of the same date to Mr. Frazee, enclosing a copy of the letter to Mr. Bowne.

Also by the evidence of Mr. Jesse Hoyt, who was collector and one of the commissioners for building the custom-house, from 1838 to 1841; he proves Mr. Frazee's employment by the commissioners, under the authority of the Treasury Department, from 1838 to the completion of the work; explains the difficulty between Mr. Frazee and Mr. Bowne, and states that the instructions of the Secretary, in the letter of March 3, 1841, (Ex. No. 3,) were followed by the commissioners.

The high abilities and eminent professional qualifications of Mr. Frazee, his enthusiastic devotion to the progress and success of this work, and his arduous and unintermitting services in it, to the exclusion of all other occupation, up to its final completion in 1842, covering the time now charged for, are fully shown by the testimony of Mr. Hoyt, that of Messrs. Launitz and Duryea, and of Dr. Francis, and by the letter of Mr. Curtis. (Ex. No. 5.)

It also appears that from the exposure incurred in the discharge of his duties upon the custom-house, he contracted a disease which carried him to his grave, and that his last days were harassed and embittered by pecuniary embarrassment, arising out of his failure to obtain from the government the compensation that was due him.

The character of the building which Mr. Frazee designed and erected, as a pure architectural model, and admirably adapted to the purposes of its construction, is forcibly stated in the evidence of Dr. Francis. There can be no question that the claimant would be entitled to a much larger sum than he now asks if he could recover upon a *quantum meruit*, unrestricted by his contract.

The testimony of the same witnesses also proves that in the course of his employment Mr. Frazee made several journeys to Washington, at the request of the commissioners, to make the explanations requisite to obtain the necessary appropriations for the work, and that the cost of a journey at that time, exclusive of expenses while at Washington, was about thirty dollars.

The account of these items, as now presented, was prepared and sworn to by Mr. Frazee in his lifetime. Strict proof of them of course cannot now be given. It is shown, however, that such expenses were incurred by him, and that the amount could not reasonably or probably have been less than the sum charged.

The failure of the appropriation for the work was the original cause of the omission to pay Mr. Frazee. An unfortunate mistake caused his claim to be stricken out of the next appropriation bill, and a special application to Congress then became necessary. Unfitted and unaccustomed as Mr. Frazee was for the prosecution of such business, and enfeebled and broken by disease and disappointment, the slender means within his control were quite inadequate to obtain the just or definite action of Congress upon his case while he lived. His widow, left destitute, is now compelled by necessity to press it upon the government.

E. J. PHELPS,  
*Of counsel for Claimant.*



IN THE COURT OF CLAIMS.

LYDIA FRAZEE, ADMINISTRATRIX, *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF UPON REARGUMENT UPON THE MERITS.

*Claim for services rendered by John Frazee, deceased, as an architect on the New York custom-house between the 5th day of December, 1840, and the 21st day of May, 1842, 456 days, at \$9 per day.*

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

1. That prior to the 5th of December, 1840, John Frazee had been employed as an architect upon the custom-house in New York, and had been paid for his services.

This fully appears from the petition and papers in the case, and is not questioned.

2. That he received on account of his services, between the 3d of March, 1841, and the 21st of May, 1842, the sum of \$561.

This is conceded in the petition and the copy of account furnished, found among the papers.

3. That when first employed, prior to 1840, his compensation was fixed at \$7 per day, which was increased on the 4th of May, 1837, to \$9.

See letter of Bowne and others of May 19, 1837, to the Secretary of the Treasury soliciting an increase of two dollars a day in addition to the seven then received, and his reply of the 24th authorizing it.

4. That he was discharged from employment by Commissioner Bowne on the 5th of December, 1840, because he considered the custom-house, so far as architectural services were concerned, as completed.

*Launitz* testifies that "he continued in the work until December, 1840, when he was discharged by Mr. Bowne."

*Hoyt* testified that he was employed until "some time in the beginning of December, 1840. Mr. Walter Bowne, the chief commissioner, without consulting or advising with the deponent, took upon himself the responsibility of dismissing Mr. Frazee from the station referred to, Mr. Bowne assuming that the custom-house was finished."

5. He was *authorized* to be reinstated by a letter from the Secretary dated on the 3d of March, 1841.

Mr. Woodbury, in his letter to Mr. Bowne, says: "I deem it proper to authorize Mr. John Frazee to be continued in the situation of superintendent and architect of the building from the date of the passage of the general appropriation bill until the custom-house and the furnishing the respective rooms shall have been completed, and it is desirable that Mr. Frazee's plans for the interior arrangements of the building should be carried into effect so far as regards the arrangements of the fly-doors, furniture, and painting of the iron work."

6. An appropriation bill passed on the 3d of March, 1841, (5. U. S. L., 419,) but contained no appropriation for continuing the work on the custom-house or purchasing furniture, but provided \$34,321 21 (pp. 428-9) to pay *arrears*.

7. There is no evidence that Mr. Bowne did, in fact, again employ Frazee, although authorized to do so, and probably because there was no appropriation out of which he could be paid.

From the evidence of Hoyt, who opposed Bowne's course, it would seem probable that Frazee remained at the custom-house after this authority to Bowne as he had done before, without employment by Bowne at all.

8. From December 5, 1840, to March 3, 1841, Frazee was not employed and did not serve the government, and there is no proof that he rendered any service after early in the spring of 1842.

*Duryea* swears he continued "until the spring of 1842—the early part of the spring."

*Launitz* testified that he continued employed "until the building was finished and taken possession of by the government, which was in the summer of 1842."

Neither of these witnesses fixes the exact time of the termination of Frazee's services.

*Frazee*, in a letter dated 10th December, 1840, (Rep. Com. 1065, p. 23,) dates a letter from the "New Custom-house, New York."

9. Frazee made two journeys to Washington during the time that he was employed, but whether during his first or second employment is not shown.

*Duryea* says he recollects Frazee's going twice to Washington, but gives no date.

*Launitz* says he knows "he had to go to Washington several times. He cannot tell by what authority or how long he remained there."

He gives no dates to these journeys.

10. There is evidence that Frazee, if at the custom-house after the 1st May, 1841, did not expect pay, and probably because there was no appropriation to pay him, and therefore Bowne did not again employ him.

*Edward Curtis*, in a letter of June 10, 1842, addressed to R. W. Thompson, chairman, &c., (Rep. 1065, p. 46,) says:

"Mr. Frazee did make a communication to me that after the 1st of May, 1841, he would serve gratuitously until the furnishing and finishing of the custom-house was completed. The communication was made some time in March, 1841, and at the same time Mr. F. stated, in conversation, "if paid for that time (a few months) during which Mr. Bowne had kept him out of his pay, he was willing to serve three or four months for nothing for the sake of having the furniture conform to his ideas of propriety, and to have the building finished completely and properly. It was then thought that everything could be made ready for occupation some time in July."

*Curtis*, in another letter to the Secretary of the Treasury, dated 7th April, 1841, (found in the same report, pp. 35-6,) says:

"Mr. Frazee feels a just pride as the architect of the building, and hence his consent to superintend the completion of the building and the fitting up of the furniture without compensation after the 1st of May."

11. Frazee's services from the 3d of March, 1841, to the 1st of May next thereafter would be 58 days, and at \$9 per day would

amount to \$522, and his account admits the payment in cash of that precise sum.

He was not entitled to pay from 5th of December, 1840, to the 3d of March, 1841, and after the 1st of May, 1841, he was not entitled to pay, because there was no appropriation, and he proposed to do what there was for him to do without compensation for the reasons assigned in Curtis' letter.

It follows that for his services rendered under expectation of pay he has been fully paid, and in fact \$39 over, in work performed by government employes for him, as appears in his account.

12. There is no evidence showing that it was a portion of Frazee's official business to go to Washington.

His own account states that he was there in the months of April, May, and June, 1842, for the purpose of obtaining an appropriation to pay off the arrears due for labor and materials in finishing the building, for which he charged \$207 39.

It is not shown that any law or individual having legal authority authorized him to engage in the business of securing legislation.

This account shows on the face of it that he was not employed in superintending the construction of the custom-house in April and May, for which he has made charge, because he was absent on other and unauthorized business.

This case seems to be one of fact merely. No question of law arises.

Frazee has been paid for all the services which he rendered the United States. His visits to Washington were unauthorized, and were probably for the purpose of obtaining appropriation to pay him for services which he had gratuitously rendered.

There are other causes shown in the report of the committee above referred to and in his own oath (at p. 82) why he did not deserve pay for the time after the 1st of May, 1841, (if not before,) because he most improperly involved the government, against its intention and will, in the most extravagant expenditures, which were deemed so grossly wrong as to induce Congress, at a heavy expense, to investigate the matter.

The present solicitor has not felt at liberty to search for and introduce new evidence, as the case has been heretofore argued and submitted; but he submits that there is abundance to show that Frazee had no legal claim on the government.

R. H. GILLET,  
*Solicitor.*

Dated December 13, 1859.

## IN THE COURT OF CLAIMS.

JUNE 1, 1859.

JNO. FRAZEE'S ADMINISTRATRIX *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The petitioner makes in her petition the following averments :

1. That on the 23d day of July, A. D. 1835, her intestate, with the approbation of the Treasury Department, was appointed architect and superintendent of the New York custom-house, at a salary of *seven dollars per day*, his travelling expenses on the business of his office to be paid, and an assistant or draughtsman to be allowed him, at *three dollars per day*.

2. That in May, A. D. 1837, the commissioners, with the approbation of the Secretary of the Treasury, increased the decedent's pay to *nine dollars per day*, but withholding the allowance for his travelling expenses.

3. That a difference having arisen between the decedent and Walter Bowne, one of the commissioners, concerning the manner and style of finishing the interior and the furniture for the custom-house, a paper, of which the following is a copy, was delivered to the decedent :

"*Resolved*, That the services of the superintendent and architect be dispensed with from and after the 5th December, 1840, and that his pay cease from that date.

"WALTER BOWNE,

"*Commissioner and Agent, New York.*

"NEW CUSTOM-HOUSE, November 30, 1840."

4. That it was usual for resolutions relating to the affairs of the building to receive the signature and approval of the advisory commissioner ; but both were withheld by Mr. Hoyt, the collector and associate commissioner, who disapproved of the dismissal of the decedent.

5. That the whole matter was submitted to the Secretary of the Treasury, who referred it to the naval officer and the surveyor of the customs at New York.

6. That, upon the report of the deputy naval officer and the surveyor of the customs, the Secretary of the Treasury, on the 3d day of March, A. D. 1841, directed that the decedent should be "continued" in the situation of architect and superintendent until the completion of the building, and that his plans and designs for finishing the interior and for the furniture should be carried into effect.

7. That the decedent, by the advice and at the request of Mr. Hoyt, notwithstanding Mr. Bowne's resolution of dismissal, continued to attend daily, as usual, at the building and to advise the workmen employed there, until he received the Secretary's letter continuing his services, and by virtue of which he resumed the full discharge of his duties as superintendent and architect.

8. That from the 3d day of March, A. D. 1841, till the 21st day of May, A. D. 1842, when the work was finished, the decedent, with the

full approbation and concurrence of the collector and the Treasury Department, performed the duties of architect and superintendent.

9. That during the period just mentioned, as well as before, the decedent made, at the request of the collector and the other government officers in charge of the work, various journeys to Washington, at his own expense, to explain the progress of the work and the amount and character of the appropriations required, so as to obtain such appropriations from Congress, and that he charged the expenses to the government.

The petitioner claims—

For the services of her intestate as architect and superintendent of the New York custom-house from the 5th day of December, A. D. 1840, to the 21st day of May, A. D. 1842, 456 days, at \$9 per day.....	\$4,104 00
For expenses to Washington in April, May, and June, A. D. 1842, to obtain an appropriation, &c.....	207 39
	<hr/>
Making an aggregate of.....	4,311 39
From which she deducts for sundry articles made for the decedent at the building.....	\$39 00
And cash on account.....	522 00
	<hr/>
	561 00

Making the balance now claimed..... 3,750 00  
with interest thereon from the 21st day of May, A. D. 1842.

1. As to the first averment:

This averment is undisputed. It is also sufficiently established by the evidence.

2. As to the second averment:

Walter Bowne, Daniel Jackson, and Benjamin Ringgold, commissioners, by a letter to the Secretary of the Treasury, dated May 19, A. D. 1837, recommended that two dollars per day be added to the seven dollars per day then allowed him: provided that no charge should be made by him for aid to draw or copy plans or specifications, or for expenses in visiting the quarry or other places where persons were at work for the new custom-house building. The Secretary of the Treasury, by a letter to the same commissioners, dated May 24, A. D. 1837, authorized "an increase of two dollars per day to his present compensation as architect and superintendent to the new custom-house building, and with the understanding that he is to discharge the duties assigned to a clerk heretofore allowed him."

3. As to the third averment:

This averment is not proved as made; but it sufficiently appears from the evidence that Mr. Bowne did some act which amounted to a dismissal of the decedent, so far as he had authority to dismiss him.

4. As to the fourth averment:

It does not appear from the evidence what was the practice of the commissioners in relation to the discharge of their duties, or what their duties were, or with what powers they were clothed. But it does appear from the evidence that Mr. Hoyt, the collector and *ex-officio*



commissioner, did not approve of the dismissal of the decedent by Mr. Bowne. (See Mr. Hoyt's deposition.)

5. As to the fifth averment:

This averment is sustained by the evidence. (See the letter of the Secretary of the Treasury to Mr. Bowne, dated March 3, A. D. 1841, and the report of the deputy naval officer and the surveyor, dated February 24, A. D. 1841.)

6. As to the sixth averment:

The Secretary of the Treasury, in a letter to Walter Bowne, commissioner, &c., dated March 3, A. D. 1841, said: "The department having called upon the deputy naval officer and surveyor at New York to report their joint views in regard to the difference of opinion existing between yourself and Mr. Hoyt respecting certain matters connected with the new custom-house building, they have accordingly complied with my request.

"In accordance with their recommendation, I deem it proper to authorize Mr. John Frazee to be continued in the situation of superintendent and architect of the building from the date of the passage of the general appropriation bill until the custom-house and the furnishing of the respective rooms shall have been completed; and it is desirable that Mr. Frazee's plans for the interior arrangement of the building should be carried into effect, so far as regards the arrangement of the fly-doors, furniture, and painting of the iron work."

7. As to the seventh averment:

Mr. Hoyt in his deposition states as follows:

"When I went into office Mr. Frazee was occupied as architect and superintendent of the custom-house, and he had been so for a long time previous thereto. He continued to act in that capacity until the building was completed, with the reservation hereafter to be mentioned, that is to say: some time in the beginning of December, 1840, Mr. Walter Bowne, the chief commissioner, without consulting or advising with the deponent, took upon himself the responsibility of dismissing Mr. Frazee from the station referred to, Mr. Bowne assuming that the custom-house was finished. Deponent was informed of that proceeding by Mr. Frazee, when deponent advised Mr. Frazee to remain in the building as usual until deponent could make a report to Mr. Woodbury, then Secretary of the Treasury, and obtain his directions thereon. Mr. Bowne and deponent were so far apart in their views upon the question that the Secretary referred the matter, as the deponent is informed, to the naval officer and surveyor of the port, to report upon the difference of opinion that existed between Mr. Bowne and deponent. Those officers made their report to the Secretary, confirming the views of the deponent, as deponent thinks. Whereupon the Secretary of the Treasury directed that Mr. Frazee be continued as architect and superintendent; and he did so continue until it was conceded that the custom-house was completed by the Treasury Department. Deponent, on one occasion, and deponent thinks in March, 1844, when the subject was more fresh in the mind of deponent than it could be at present, wrote a letter to Mr. Frazee on the subject, the draught of which letter was destroyed by fire at the office of deponent some three or four years.

since; but if the petitioner should have the original letter, as engrossed, deponent would prefer that it should be attached to this deposition."

There is on file in this case a paper purporting to be a letter from Mr. Hoyt to Mr. John Frazee, dated March 6, A. D. 1840; but it is not annexed to Mr. Hoyt's deposition, nor is it otherwise authenticated. In that paper is the following statement: "I wrote to the Secretary under the idea that he would interfere in a matter about which there was a difference of opinion between Mr. Bowne and myself, and therefore I recommended that you should remain at the building and see that nothing was done inconsistent with the general plan which had been adopted for its construction until the Secretary should decide upon the points upon which Mr. Bowne and myself differed; and you adopted my advice, and did remain until the Secretary did order you to be continued, which I considered at the time as a decision on his part that you had not been dismissed according to the appropriate forms."

8. As to the eighth averment:

Stephen C. Duryea testifies that he knows of the decedent's being employed as architect and superintendent of the New York custom-house in 1840, and some time earlier, and until the spring of 1842—the early part of the spring.

R. E. Lannitz testifies as follows: "I knew Mr. Frazee was engaged as architect and superintendent of the custom-house while it was being constructed. He commenced under his first appointment in the year 1836. I know the date from having been at that time, and for a few months after, his partner. He continued in the work until December, 1840, when he was discharged by Mr. Bowne. After that, about the 3d of March, 1841, he was reappointed by the Secretary of the Treasury, and continued to act as superintendent until the building was finished and taken possession of by the government, which was in the summer of 1842. He also designed all the fixtures, railings," &c.

In a statement made by Mr. Edward Curtis, dated March 7, A. D. 1844, which the solicitor has admitted in evidence, Mr. Curtis states as follows: "I have read Mr. Frazee's memorial. To the best of my recollection he has truly stated the conversation which passed between him and myself when I entered upon the duties of the office of collector in March, 1841."

That part of the decedent's memorial to which Mr. Curtis refers in his statement is as follows:

"On the 23d March, 1841, Mr. Curtis succeeded to the collectorship of the port of New York, and soon after requested an interview with your memorialist; it took place, and then and subsequently the collector expressed a strong desire to hasten the completion of the building and fit it for occupancy with the least delay. The buildings then occupied by the custom-house were not only inconvenient but insecure, and the public records were not safe there. Your memorialist was asked when the new building could be completed and furnished, and if it could not be rendered habitable by August then next, and also if he could not consent to lessen his compensation for the few intervening months. In reply, a strong doubt was expressed of the possibility of

finishing and furnishing the building by August; and as to compensation, your memorialist, among other things, alluded to the suspension of his pay in consequence of the course pursued by Mr. Bowne, and said and consented, in case he received his back pay, to render his services gratuitously until the completion *as fixed* by the collector. This, in truth, was the *spirit*, if not the letter, of his consent to serve gratuitously. But the contingency upon which this consent rested never happened; the building was not finished in August, 1841; nor has your memorialist to this hour received his back pay. Besides, your memorialist has reason to believe that the collector soon after communicated to the Treasury Department this consent to serve gratuitously, and that no instructions on the subject have ever been given, nor has the receipt of it ever been acknowledged by the Secretary of the Treasury."

Mr. Curtis, in his statement already noticed, also said:

"I was not a commissioner for the superintendence of the construction of the new custom-house, and neither had nor professed to have any power or responsibility in respect to its construction, nor in regard to the terms or compensation of Mr. Frazee as its architect. His commission was from the Department of the Treasury, and I mentioned in one of my letters to Dr. Ewing what had been said by Mr. Frazee, but I received no authority to make any new arrangements touching his terms or his compensation, and no notice was taken by the department of what I communicated."

Mr. Edward Curtis, in a letter to the Secretary of the Treasury, dated March 25, A. D., 1841, said:

"Mr. Bowne, I am told, claims heavy compensation from the United States for his services, and, to save further expense, he ought to be dismissed and required to render his account.

"Charles A. Davis, esq., of the firm of Davis, Brooks & Co., merchants of high standing, has consented, at my request, to act as commissioner in the place of Mr. Bowne *without compensation*.

"Mr. Frazee, the architect, has agreed with me, in case Mr. Bowne be removed, to serve *for nothing* from and after the first day of May next. I enclose his note to me making that offer."

The decedent, John Frazee, in a letter to Mr. Edward Curtis dated March 23, A. D. 1841, said:

"To convince you that I am desirous to give my support to a judicious economy with the public treasure, I will, from and after the first day of May next, render my services upon the building as superintendent and architect until every part of the work shall be completed without charge or compensation."

The Secretary of the Treasury, in a letter to Walter Bowne, dated April 12, A. D. 1841, said:

"The department having appointed George F. Tallman, esq., of New York, commissioner and disbursing agent for the new custom-house, you are consequently relieved from the future discharge of those duties."

The deputy naval officer and the surveyor, in their report dated February 26, A. D. 1841, said:

"The pay list of the workmen, as we have seen, shows that at the

time Mr. Frazee was dismissed, December 5, 1840, there were upwards of thirty workmen engaged upon the building, and that nearly the same number were continued upon the work for several weeks afterwards ; and, as has already been stated, a number of workmen are still employed upon the building. Thus it appears that during a period of nearly two months this important edifice has been progressing towards completion without the superintendence of any person properly qualified to direct the workmen in the various and difficult branches in which they were engaged. In view of these facts and considerations, we feel constrained to regard the resolution of Mr. Bowne dismissing the architect and superintendent without cause or provocation as an act of gross injustice to one of the first artists of the age, as well as detrimental to the public interests. And as there appears to be much work still to be done upon the building which requires the professional skill and superintending services of Mr. Frazee, we would recommend that he be immediately reinstated. We would also most respectfully beg leave to state it here, as our deliberate opinion, that justice cannot be done Mr. Frazee without allowing him his usual compensation during the whole interval of time since his dismissal on the 5th of December, 1840, he having been improperly dismissed without cause, and thereby unexpectedly thrown out of employment, greatly prejudicial to his interests."

9. As to the ninth averment :

Stephen C. Duryea testifies that he recollects of the decedent's going twice to Washington on business of the custom-house. He can not specify how many times more.

R. E. Lannitz testifies that he knows that the decedent had to go on the business of the custom-house to Washington several times. He cannot tell by what authority, nor how long he remained there.

Mr. Hoyt testifies that the decedent made several journeys to Washington on the business of the commission during the progress of the work ; that the expense at that day was about thirty dollars.

In the paper purporting to be a letter from Mr. Hoyt to the decedent, already noticed, there is the following statement :

"In regard to your visits to Washington on business relating to the new custom-house, to explain in reference to appropriations asked for, I know that you did so visit Washington, and I am under the impression it was at the suggestion of the Secretary, but certainly at the request of the commissioners of the custom-house, and I have no doubt your expenses were paid and charged to construction, as I think it was a fair charge. The appropriations were large and more than was originally contemplated, and it was very proper to ask for and equally proper to explain the causes for the excess, which it was next to impossible to explain by letter."

Mr. Curtis, in his statement, says : "In the spring of 1842, Mr. Frazee frequently spoke to me of the trouble that existed from the want of means to pay the workmen employed on the building, and others who had claims for materials furnished. There was no acting commissioner. On several former occasions, in previous years, the work on the building had been ahead of the appropriations, and the commissioners had sent Mr. F. to Washington to make the necessary

explanations and aid in obtaining the requisite appropriations. I advised him to go to Washington, as he had been on former occasions, and explain to the department and Congress the state of the accounts, show what and how much was due, and, by application to the Treasury Department and to Congress, to do what he could to obtain the means to pay off the arrears to laborers and others having just claims. In accordance with this advice, Mr. Frazee went to Washington in May or June, 1842."

The facts of this case seem to us to be as follows :

John Frazee was employed by proper authority as the architect and superintendent of the custom-house in New York, at a compensation of *nine dollars* a day. On the 5th day of December, A. D. 1840, he was dismissed from that employment, and on the 3d day of March, A. D. 1841, he was reinstated in it. He continued to perform the duties of architect and superintendent from the day last mentioned till the completion of the custom-house, some time in the spring or summer of the year 1842. The precise time when the custom-house was finished being uncertain, Mr. Duryea stating it to be early in the spring and Mr. Lannitz in the summer of the year 1842, we have adopted the day stated by the decedent on oath, first, because it is so stated, and second, because it is about intermediate between the period stated by Mr. Duryea and that stated by Mr. Lannitz.

The petitioner claims that the decedent was entitled to compensation from the 5th day of December, A. D. 1840, till the 3d day of March, A. D. 1841, as well as afterwards ; but our opinion is that he did not, during that interval, perform the duties of architect and superintendent. This is obvious from the report of the deputy naval officer and surveyor.

On the other hand, it is objected that after the 1st day of May, A. D. 1841, the decedent served gratuitously. It is plain that he made an offer to do so, but it seems to us to be equally plain that his offer was never accepted. Moreover, the just inference from the evidence is, that if it had been accepted, then, upon an arrangement for that purpose being formally made, two conditions would have been annexed : first, that his pay from December 5, A. D. 1840, till March 3, A. D. 1841, should have been made good to him ; and second, that the work should be completed on or before the 1st day of August, A. D. 1841. Our opinion is that there never was any definite and binding arrangement for him to serve gratuitously. The Secretary of the Treasury took no notice of the offer made by him for this purpose. In this respect he acted wisely. If the United States needed the services of the decedent, justice, as well as public policy, required that they should make him a fair and reasonable compensation therefor. If they did not need his services, then he ought not to have been employed.

Our opinion is that the decedent was entitled to compensation, at the rate of \$9 a day, from the 3d day of March, A. D. 1841, till the 21st day of May, A. D. 1842, subject to a deduction of \$522, the amount found due by the select committee, under the act of Congress approved May 18, A. D. 1842, (5 Stat. at L., p. 485, ch. 29, No. 179,)



and of \$39 for articles made for the decedent at the custom-house, to wit:

For <i>three hundred and eighty-one days</i> , at \$9 a day.....	\$3,429 00
Subject to a deduction of the aggregate of the two sums just mentioned.....	561 00
Leaving a balance of.....	<u>2,868 00</u>

Our opinion further is, that the decedent was not entitled to compensation for his journeys and attendance at Washington in the year 1842.

We shall report to Congress a bill in favor of the petitioner for the sum of two thousand eight hundred and sixty-eight dollars.

